



General Assembly

January Session, 2007

Raised Bill No. 7176

LCO No. 4381

04381_____ED_

Referred to Committee on Education

Introduced by:
(ED)

AN ACT CONCERNING SPECIAL EDUCATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of subsection (d) of section 10-76h of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective July 1, 2007*):

4 (d) (1) In making a determination as to the issues in dispute, the
5 hearing officer or board shall review the evidence presented in the
6 hearing with the burden of proof on the party requesting the hearing.
7 The hearing officer or board [shall have the authority (A) to] may (A)
8 confirm, modify, or reject the identification, evaluation or educational
9 placement of or the provision of a free appropriate public education to
10 the child or pupil, (B) [to] determine the appropriateness of an
11 educational placement where the parent or guardian of a child
12 requiring special education or the pupil if such pupil is an
13 emancipated minor or eighteen years of age or older, has placed the
14 child or pupil in a program other than that prescribed by the planning
15 and placement team, or (C) [to] prescribe alternate special educational
16 programs for the child or pupil. If the parent or guardian of such a
17 child who previously received special education and related services

18 from the district enrolls the child, or the pupil who previously received
19 special education and related services from the district enrolls in a
20 private elementary or secondary school without the consent of or
21 referral by the district, a hearing officer may, in accordance with the
22 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as
23 amended from time to time, require the district to reimburse the
24 parents or the pupil for the cost of that enrollment if the hearing officer
25 finds that the district had not made a free appropriate public education
26 available to the child or pupil in a timely manner prior to that
27 enrollment. In the case where a parent or guardian, or pupil if such
28 pupil is an emancipated minor or is eighteen years of age or older, or a
29 surrogate parent appointed pursuant to section 10-94g, has refused
30 consent for initial evaluation or reevaluation, the hearing officer or
31 board may order an initial evaluation or reevaluation without the
32 consent of such parent, guardian, pupil or surrogate parent except that
33 if the parent, guardian, pupil or surrogate parent appeals such decision
34 pursuant to subdivision (4) of this subsection, the child or pupil may
35 not be evaluated or placed pending the disposition of the appeal. The
36 hearing officer or board shall inform the parent or guardian, or the
37 emancipated minor or pupil eighteen years of age or older, or the
38 surrogate parent appointed pursuant to section 10-94g, or the
39 Commissioner of Children and Families, as the case may be, and the
40 board of education of the school district or the unified school district of
41 the decision in writing and mail such decision not later than forty-five
42 days after the commencement of the hearing pursuant to the
43 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as
44 amended from time to time, except that a hearing officer or board may
45 grant specific extensions of such forty-five-day period in order to
46 comply with the provisions of subsection (b) of this section. The
47 hearing officer may include in the decision a comment on the conduct
48 of the proceedings. The findings of fact, conclusions of law and
49 decision shall be written without personally identifiable information
50 concerning such child or pupil, so that such decisions may be available
51 for public inspections pursuant to sections 4-167 and 4-180a.

52 Sec. 2. Subsection (b) of section 10-76d of the general statutes is
53 repealed and the following is substituted in lieu thereof (*Effective July*
54 *1, 2007*):

55 (b) In accordance with the regulations of the State Board of
56 Education, each local and regional board of education shall: (1)
57 Provide special education for school-age children requiring special
58 education who are described in subparagraph (A) of subdivision (5) of
59 section 10-76a. The obligation of the school district under this
60 subsection shall terminate when such child is graduated from high
61 school or [reaches age twenty-one] upon the child's twenty-first
62 birthday, whichever occurs first; and (2) provide special education for
63 children requiring special education who are described in
64 subparagraph (A) or (C) of subdivision (5) of section 10-76a. The State
65 Board of Education shall define the criteria by which each local or
66 regional board of education shall determine whether a given child is
67 eligible for special education pursuant to this subdivision, and such
68 determination shall be made by the board of education when
69 requested by a parent or guardian, or upon referral by a physician,
70 clinic or social worker, provided the parent or guardian so permits. To
71 meet its obligations under this subdivision, each local or regional
72 board of education may, with the approval of the State Board of
73 Education, make agreements with any private school, agency or
74 institution to provide the necessary preschool special education
75 program, provided such private facility has an existing program which
76 adequately meets the special education needs, according to standards
77 established by the State Board of Education, of the preschool children
78 for whom such local or regional board of education is required to
79 provide such an education and provided such district does not have
80 such an existing program in its public schools. Such private school,
81 agency or institution may be a facility which has not been approved by
82 the Commissioner of Education for special education, provided such
83 private facility is approved by the commissioner as an independent
84 school or licensed by the Department of Public Health as a day care or
85 nursery facility or be both approved and licensed.

86 Sec. 3. Subsection (b) of section 10-76g of the general statutes is
87 repealed and the following is substituted in lieu thereof (*Effective July*
88 *1, 2007*):

89 (b) Any local or regional board of education which provides special
90 education pursuant to the provisions of sections 10-76a to 10-76g,
91 inclusive, for any exceptional child described in subparagraph (A) of
92 subdivision (5) of section 10-76a, under its jurisdiction, excluding (1)
93 children placed by a state agency for whom a board of education
94 receives payment pursuant to the provisions of subdivision (2) of
95 subsection (e) of section 10-76d, and (2) children who require special
96 education, who reside on state-owned or leased property or in
97 permanent family residences, as defined in section 17a-154, and who
98 are not the educational responsibility of the unified school districts
99 established pursuant to sections 17a-37, 17a-240 and 18-99a, shall be
100 financially responsible for the reasonable costs of special education
101 instruction, as defined in the regulations of the State Board of
102 Education, in an amount equal to (A) for any fiscal year commencing
103 prior to July 1, 2005, five times the average per pupil educational costs
104 of such board of education for the prior fiscal year, determined in
105 accordance with the provisions of subsection (a) of section 10-76f, [and]
106 (B) for the fiscal [year] years commencing July 1, 2005, and [each fiscal
107 year thereafter] July 1, 2006, four and one-half times such average per
108 pupil educational costs of such board of education, and (C) for the
109 fiscal year commencing July 1, 2007, and each fiscal year thereafter (i)
110 seventy per cent of the per pupil costs that are in excess of two and
111 one-half times such average per pupil educational costs of such board
112 of education, but are less than three and one-half times such average
113 per pupil educational costs of such board of education, (ii) forty per
114 cent of the per pupil costs that are equal to or in excess of three and
115 one-half times such average per pupil educational costs of such board
116 of education, but are less than four and one-half times such average
117 per pupil educational costs of such board of education, and (iii) ten per
118 cent of the per pupil costs that are equal to or in excess of four and
119 one-half times such average per pupil educational costs of such board

120 of education. The State Board of Education shall pay on a current basis
 121 any costs in excess of the local or regional board's basic contribution
 122 paid by such board in accordance with the provisions of this
 123 subsection. Any amounts paid by the State Board of Education on a
 124 current basis pursuant to this subsection shall not be reimbursable in
 125 the subsequent year. Application for such grant shall be made by filing
 126 with the Department of Education, in such manner as prescribed by
 127 the commissioner, annually on or before December first a statement of
 128 the cost of providing special education pursuant to this subsection,
 129 provided a board of education may submit, not later than March first,
 130 claims for additional children or costs not included in the December
 131 filing. Payment by the state for such excess costs shall be made to the
 132 local or regional board of education as follows: Seventy-five per cent of
 133 the cost in February and the balance in May. The amount due each
 134 town pursuant to the provisions of this subsection shall be paid to the
 135 treasurer of each town entitled to such aid, provided the treasurer shall
 136 treat such grant, or a portion of the grant, which relates to special
 137 education expenditures incurred in excess of such town's board of
 138 education budgeted estimate of such expenditures, as a reduction in
 139 expenditures by crediting such expenditure account, rather than town
 140 revenue. Such expenditure account shall be so credited no later than
 141 thirty days after receipt by the treasurer of necessary documentation
 142 from the board of education indicating the amount of such special
 143 education expenditures incurred in excess of such town's board of
 144 education budgeted estimate of such expenditures.

145 Sec. 4. Subsection (a) of section 10-76ff of the general statutes is
 146 repealed and the following is substituted in lieu thereof (*Effective July*
 147 *1, 2007*):

148 (a) Each local and regional board of education shall follow the
 149 procedures outlined in this section in determining if a child requires
 150 special education and related services, as defined in section 10-76a. (1)
 151 In conducting an evaluation of the child, the local or regional board of
 152 education shall: (A) Use a variety of assessment tools and strategies to

153 gather relevant functional, developmental and academic information,
154 including information provided by the child's parent or guardian, that
155 may assist in determining (i) whether the child is a child, (I) who
156 requires special education and related services pursuant to
157 subparagraphs (A) and (C) of subdivision (5) of section 10-76a, (II)
158 whose disability has an adverse effect on his educational performance,
159 and (III) who, by reason of such adverse effect requires special
160 education and related services, and (ii) the content of the child's
161 individualized education program, including information related to
162 enabling the child to be involved in and progress in the general
163 curriculum or, for preschool children, to participate in appropriate
164 activities; (B) not use any single measure or assessment as the sole
165 criterion for determining whether a child is a child with a disability or
166 determining an appropriate educational program for the child; and (C)
167 use technically sound instruments that may assess the relative
168 contribution of cognitive and behavioral factors, in addition to physical
169 or developmental factors. (2) Each local and regional board of
170 education shall ensure that: (A) Assessments and other evaluation
171 materials used to assess the child are (i) selected and administered so
172 as not to be discriminatory on a racial or cultural basis, and (ii)
173 provided and administered in the language and form most likely to
174 yield accurate information on what the child knows and can do
175 academically, developmentally and functionally, unless it is not
176 feasible to so provide or administer; (B) assessments and other
177 evaluation materials used to assess a child (i) are used for purposes for
178 which the assessments or measures are valid and reliable, (ii) are
179 administered by trained and knowledgeable personnel, and (iii) are
180 administered in accordance with any instructions provided by the
181 producer of such tests; (C) the child is assessed in all areas of suspected
182 disability; (D) assessment tools and strategies that provide relevant
183 information that directly assists persons in determining the
184 educational needs of the child are provided; and (E) assessments of
185 children with disabilities who transfer from one school district to
186 another school district in the same academic year are coordinated with

187 such children's prior and subsequent schools, as necessary and as
 188 expeditiously as possible, to ensure prompt completion of full
 189 evaluations. (3) In accordance with section 10-76d and applicable
 190 federal law and regulations, upon completion of administration of
 191 assessments and other evaluation measures, the determination of
 192 whether the child is a child requiring special education and related
 193 services shall be made by a team consisting of qualified professionals
 194 and the parent or guardian of the child and a copy of the evaluation
 195 report and the documentation for such determination shall be given to
 196 the parent or guardian of the child. (4) The local or regional board of
 197 education shall not determine that a child requires special education
 198 and related services if the dominant factor for determining eligibility is
 199 (A) a lack of instruction in reading, including the essential components
 200 of reading instruction, as defined in Section 1208(3) of the Elementary
 201 and Secondary Education Act of 1965, or mathematics or limited
 202 English proficiency, or (B) evidence that the child's behavior violates
 203 the school's disciplinary policies or evidence that is derived from the
 204 contents of discipline records. In determining whether a child has a
 205 specific learning disability, as defined in 34 CFR Part 300.8(c)(10), a
 206 local or regional board of education may use a process that determines
 207 if the child responds to scientific, research-based intervention as part of
 208 the evaluation process described in 20 USC 1414(b)(2) and (3), but the
 209 board is not required to consider whether such child has a severe
 210 discrepancy between achievement and intellectual ability in oral
 211 expression, listening comprehension, written expression, basic reading
 212 skill, reading comprehension, mathematical calculation or
 213 mathematical reasoning.

214 Sec. 5. (NEW) (*Effective July 1, 2007*) (a) On or before January 1, 2008,
 215 the Department of Education shall establish a two-year demonstration
 216 program to provide for instructional interventions for students who
 217 are struggling academically or behaviorally.

218 (b) The purposes of the demonstration program established
 219 pursuant to subsection (a) of this section shall be to: (1) Improve

220 student achievement and close achievement gaps between groups of
221 students by providing systems of academic and behavior intervention
222 for all students in the program, (2) provide services and support
223 normally only available to students who are disabled without labeling
224 such students as disabled, and (3) substantially reduce the number of
225 children identified as a child requiring special education, as defined in
226 section 10-76a of the general statutes. The demonstration program
227 shall operate in five local school districts, one of which shall be a
228 district for a large town, one of which shall be a district for a small
229 town, two of which shall be a district for a suburban town and one of
230 which shall be a district for a rural town.

231 (c) As part of the demonstration program established pursuant to
232 subsection (a) of this section, each participating local school district
233 shall: (1) Allocate district resources to provide for internal coaches and
234 specialists in the field of academic and behavior intervention,
235 professional development of staff, materials, data management and
236 analysis and the development of a sustainability plan, (2) seek and
237 allocate regional resources to provide for external coaches in the field
238 of academic and behavior intervention and professional development
239 of staff, (3) allocate state resources received pursuant to this section, to
240 provide for evaluation of the program, data entry and management,
241 grant management, project coordinator and monitoring of fidelity of
242 implementation, professional development of staff and policy
243 development and initiative coherence.

244 (d) Local boards of education interested in participating in the pilot
245 program may apply to the department at such time and in such a
246 manner as the Commissioner of Education prescribes.

247 Sec. 6. (*Effective July 1, 2007*) The sum of two million two hundred
248 fifty thousand dollars is appropriated to the Department of Education,
249 from the General Fund, for the fiscal year ending June 30, 2008, for the
250 purposes of section 5 of this act.

251 Sec. 7. (*Effective July 1, 2007*) The sum of two million two hundred

252 fifty thousand dollars is appropriated to the Department of Education,
253 from the General Fund, for the fiscal year ending June 30, 2009, for the
254 purposes of section 5 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	10-76h(d)(1)
Sec. 2	<i>July 1, 2007</i>	10-76d(b)
Sec. 3	<i>July 1, 2007</i>	10-76g(b)
Sec. 4	<i>July 1, 2007</i>	10-76ff(a)
Sec. 5	<i>July 1, 2007</i>	New section
Sec. 6	<i>July 1, 2007</i>	New section
Sec. 7	<i>July 1, 2007</i>	New section

Statement of Purpose:

To establish that the burden of proof lies with the party requesting a special education hearing, to provide that a local or regional board of education's commitment to provide special education to a child terminates upon the child's twenty-first birthday, to reduce the threshold for the excess cost grant and to introduce a tiered process of increased reimbursement percentages, to establish a two-year pilot program for students who are struggling academically or behaviorally and to integrate federal response to intervention language into the general statutes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]